

Agricultural Marketing Service, USDA

§ 1208.50

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Council of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Council may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically;

(4) Any subcontractor who enters into a contract with a Council contractor and who receives or otherwise uses funds allocated by the Council shall be subject to the same provisions as the contractor;

(g) To prepare and submit for approval of the Secretary, before the beginning of each fiscal year, rates of assessment and a fiscal year budget of the anticipated expenses to be incurred in the administration of the Order, including the probable cost of each promotion, research, and information activity proposed to be developed or carried out by the Council in accordance with §1208.50;

(h) To borrow funds necessary for the startup expenses of the order;

(i) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may require and to make the records available to the Secretary for inspection and audit; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Council;

(j) To cause its books to be audited by a independent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(k) To give the Secretary the same notice of meetings of the Council as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Council to the Secretary;

(l) To act as intermediary between the Secretary and any producer, first handler, processor, importer, or foreign producer;

(m) To furnish to the Secretary any information or records that the Secretary may request;

(n) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(o) To recommend to the Secretary such amendments to the Order as the Council considers appropriate;

(p) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the processed raspberry industry's position in the marketplace; maintain and expand existing markets and uses for processed raspberries; and to carry out programs, plans, and projects designed to provide maximum benefits to the processed raspberry industry; and

(q) To pay the cost of the activities with assessments collected under §1208.52.

§ 1208.48 Prohibited activities.

The Council may not engage in, and shall prohibit the employees and agents of the Council from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Council under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the Order that may be false or misleading or disparaging to another agricultural commodity.

EXPENSES AND ASSESSMENTS

§ 1208.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Council shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. The budget for research, promotion, or information may not be implemented prior to approval of the

budget by the Secretary. No later than forty-five (45) days after the receipt of such budget, the Secretary shall notify the Council whether the Secretary approves or disapproves the budget. Each budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data of at least one preceding year (except for the initial budget); and

(3) A summary of proposed expenditures for each program, plan, or project;

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts in funds which do not cause an increase in the Council's approved budget, and which are consistent with by laws, need not have prior approval by the Department.

(d) The Council is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Council.

(e) With approval of the Secretary, the Council may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council. Any funds borrowed by the Council shall be expended for startup costs and capital outlays and are limited to the first year of operation of the Council.

(f) The Council is authorized to repay startup costs associated with establishing a program and an initial referendum. If approved, these costs

would be amortized and repaid over a maximum three (3) year period.

(g) The Council may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects approved by the Secretary. Such contributions shall be free from any encumbrance by the donor and the Council shall retain complete control of their use.

(h) The Council may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, with the approval of the Secretary, for authorized activities.

(i) The Council shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, enforcement, and supervision of the Order, including all referendum costs in connection with the Order.

(j) The Council may not expend for administration, maintenance, and functioning of the Council in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Council for that fiscal year. Reimbursements to the Secretary required under paragraph (i) of this section are excluded from this limitation on spending.

(k) The Council may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: Provided that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

(l) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Council may invest assessments and all other revenues collected under this section in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System; or

Agricultural Marketing Service, USDA

§ 1208.52

(4) Obligations fully guaranteed as to principal interest by the United States.

§ 1208.51 Financial statements.

(a) As requested by the Secretary, the Council shall prepare and submit financial statements to the Secretary on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Council shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

§ 1208.52 Assessments.

(a) The funds to cover the Council's expenses shall be paid from assessments on producers and importers at a rate not to exceed one cent per pound; the initial rate is one cent per pound, donations from any person not subject to assessments under this Order, and other funds available to the Council including those collected pursuant to § 1208.56 and subject to the limitations contained therein.

(b) The collection of assessments on domestic processed raspberries will be the responsibility of the first handler receiving the raspberries for processing. In the case of the producer acting as its own first handler, the producer will be required to collect and remit its individual assessments. The rate of assessments shall be prescribed in regulations issued by the Secretary.

(c) The Council may recommend to the Secretary an increase or decrease to the assessment rate. Such an increase or decrease may occur not more than once annually. Any change in the assessment rate shall be subject to rulemaking by the Department.

(d) Each importer of processed raspberries shall pay an assessment to the Council on processed raspberries imported for marketing in the United States, through Customs. If Customs does not collect an assessment from an

importer, the importer would be responsible for paying the assessment directly to the Council. The assessment rate for imported processed raspberries shall not exceed one cent per pound, with the initial rate being one cent per pound.

(1) The assessment rate for imported processed raspberries shall be the same or equivalent to the rate for processed raspberries produced in the United States.

(2) The import assessment shall be uniformly applied to imported processed red raspberries that are identified by the numbers 0811.20.2025, 2007.99.65.10, and 2009.80.60.55 in the Harmonized Tariff Schedule of the United States or any other numbers used to identify processed raspberries. Processed raspberries entering the United States under HTS code 2007.99.65.10 will be initially assessed using a 1:1 ratio to HTS code 0811.20.2025. Processed raspberries entering the United States under HTS code 2009.80.60.55 will be assessed using a 6.8:1 ratio to HTS code 0811.20.2025. Assessments and conversion ratios on other types of processed raspberries may be added at the recommendation of the Council subject to the approval of the Secretary.

(3) Each importer of processed raspberries shall pay through Customs to the Council an assessment on processed raspberries imported into the United States as described in section 804(a) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202-1683g), provided that it can be categorized in the HTS numbers listed in paragraph (d)(2) of this section.

(4) Imported processed raspberries covered under the program will have a quantity associated with it in either kilograms or liters. The factor used to convert one pound to kilograms is .45359237. The factor used to convert one pound to liters is .45359237 liters of water weight. Therefore, the assessment rate for imported processed raspberries will be \$.022 per kilogram/liter.

(5) Table I, Processed Raspberry Products Assessment Table, contains the applicable HTS classification numbers of processed red raspberries, processed red raspberry paste and puree, and processed red raspberry juice and